| UNITED STATES DISTRICT COURT<br>NORTHERN DISTRICT OF NEW YORK |           |
|---|-----------|
| x   | Index No. |
| PAUL WILLIAMS.  |           |

Plaintiff,

COMPLAINT

-against-

SMITH AVENUE MOVING CO., ESTATE OF FREDERICK G. FAERBER, and GARY FAERBER,

JURY TRIAL DEMANDED

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Plaintiff, Paul Williams ("Williams") by and through its attorney, Joseph J. Haspel, Esq., as and for its complaint against the defendants, Smith Avenue Moving Co., Estate of Frederick G. Faerber and Gary Faerber, respectfully alleges as follows:

### NATURE OF THE CASE

- 1. This is an action seeking damages for breach of contract and conversion relating to the storage of valuable antiques and commissioned artwork having a value in excess of \$400,000.00.
- 2. The "Descriptive Inventory" as recorded by Moving
  Co. to which this action relates is set forth at Exhibit A
  hereto (the "Property").

#### PARTIES

2. At all relevant times, Plaintiff, Paul Williams, is and was an individual residing at 229 Academy Terrace, Linden, NJ 07036.

- 3. Upon information and belief, at all relevant times, Defendant Smith Ave. Moving Co. ("Moving Co.) is and was a unincorporated business enterprise owned in whole or in part by Frederick G. Faerber III (now deceased), with its principal place of business at 149 Clinton Avenue, Kingston, New York.
- 4. Upon information and belief, at all relevant times, Defendant, Estate of Frederick G. Faerber III is the successor to Frederick G. Faerber who died on March 23, 2006.
- 5. Upon information and belief, defendant Gary Faerber is an individual who resides at 153 Clinton Avenue, Kingston, New York.

#### JURISDICTION AND VENUE

- 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(a)(1) and 1332(c)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states, Williams being a citizen of the State of New Jersey, and defendants each being a citizen of the State of New York.
- 7. Venue is proper in this Court pursuant to 28 U.S.C. \$ 1391 because defendants reside in this district, a substantial part of the events and omissions giving rise to the subject claims occurred in this district, a substantial part of property that is the subject of the action is

situated here, and defendants are subject to personal jurisdiction here.

### FACTUAL BACKGROUND

- 8. Beginning in April, 2003, Williams retained Moving
  Co. to move and store the Property.
- 9. The Property was moved by Moving Co. from locations on Long Island and Stone Ridge, New York, and Boston,
  Massachusetts to its storage facility in Kingston, New York.
  - 10. Williams paid monthly storage charges as required.
- 11. On or about March 29, 2006, Williams received a letter from Bonnie L. Coliukos ("Coliukos"), daughter of frederick G. Faerber, III ("Fred"), which letter informed Williams that Fred had died on March 23, 2006.
- 12. Coliukos' March 29, 2006 letter indicated that as a result of Fred's death Moving Co. was discontinuing the storage part of its business.
- 13. Coliukos' March 29, 2006 requested that Williams make arrangements to move his Property to a different location.
- 14. On April 24, 2006, Williams called Coliukos to make arrangements to remove the property from Moving Co.'s possession (the "April 24 Telephone Call").
- 15. During the April 24 Telephone Call, Colikos advised Williams that Gary Faerber changed the locks on the storage facility and that she would be unable to obtain access to the Property.

- 16. Thereafter, in a conversation with Gary Faerber and his counsel, Daniel Heppner, Esq., Williams was informed that his property was auctioned on or about October 1, 2005, and that Gary Faerber retained the auction proceeds.
- 17. Williams was never notified of any proposed auction.
- 18. As a result of Defendants' wrongful actions,
  Williams has suffered economic damages and has been forced
  to incur expenses related to this lawsuit, other costs, and
  attorney's fees.

# FIRST CLAIM FOR RELIEF (Breach of Contract)

- 19. Williams repeats and restates the allegations set forth in Paragraphs 1 through 17 above.
- 20. Williams and Defendants entered into an agreement whereby, among other things, Defendants agreed to perform specified services for Williams, including but not limited to the storage of the Property.
- 21. For the storage services, Williams agreed to pay a fixed monthly charge.
- 22. Williams paid the fixed monthly charge as required.
- 23. Defendants breached their Agreement by failing to exercise reasonable care and by causing the Property to be lost.
  - 24. As a direct and proximate result of Defendants'

breach of contract, Williams has been damaged in an amount to be determined and proved at trial but currently known to be at least \$500,000.00.

### SECOND CLAIM FOR RELIEF (Conversion)

- 25. Williams repeats and restates the allegations set forth in Paragraphs 1 through 24 above.
- 26. As set forth above, Defendants exercised dominion and control over the Property in a manner which greatly exceeded their authority. Specifically, Defendants auctioned the Property at a time when they were without authority to do so.
- 27. One or more of the Defendants have retained the proceeds of the auction of the Property.
  - 28. Defendants have converted Williams' Property.
- 29. By reason of the foregoing, Williams has been directly and proximately damaged in an amount exceeding \$500,000.00.

# THIRD CLAIM FOR RELIEF (Unjust Enrichment)

- 30. Williams repeats and restates the allegations set forth in Paragraphs 1 through 29 above.
- 31. Defendants have been unjustly enriched by their sale of William's Property.
- 32. By reason of the foregoing, Williams has been directly and proximately damaged in an amount exceeding \$500,000.00.

## FOURTH CLAIM FOR RELIEF (Fraud)

- 33. Williams repeats and restates the allegations set forth in Paragraphs 1 through 32 above.
- 34. After the time the Property was purportedly auctioned, Williams continued to remit monthly storage fees.
- 35. These storage fees were accepted at a time when Defendants knew that they were no longer in possession.
- 36. By reason of the foregoing, Williams has been directly and proximately damaged in an amount exceeding \$50,000.00.

WHEREFORE, Williams demands a judgment against Defendants as follows:

- A. On William's First Claim for Relief, judgment in an amount to be determined at trial but believed to be in excess of \$500,000.00, plus interest;
- B. On William's Second Claim for Relief, judgment in an amount to be determined at trial but believed to be in excess of \$500,000.00, plus interest;
- C. On William's Third Claim for Relief, judgment in an amount to be determined at trial but believed to be in excess of \$500,000.00, plus interest;
- D. On William's Fourth Claim for Relief, judgment in an amount to be determined at trial but believed to be in excess of \$50,000.00, plus interest
  - E. On all claims for relief, the costs of this action,

including Court costs and reasonable attorneys' fees;

- F. Punitive damages in the amount of \$5,000,000; and
- G. Such other and further relief as is just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully Submitted,

Joseph J. Waspel, Esq. Attorneys for Plaintiff 40 Matthews Street

Shen, New York 10924

845-294-8950

EXHIBIT A

EXHIBIT A

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